ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

94-11

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Commission, en banc

OPPOSITION TO CONTINGENT APPLICATION FOR REVIEW

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully oppose the contingent application for review filed in the captioned proceeding on February 15, 1991 by Telephone and Data Systems, Inc. (TDS), seeking reversal in part of the Order On Reconsideration issued by the Deputy Chief, Common Carrier Bureau, DA

90-1917, adopted December 31, 1990 and released January 15, 1991.[1] The Settling Partners respectfully submit that TDS' requested relief is without merit and, accordingly, that its application for review should be denied. In support thereof, the Settling Partners respectfully show:

In its Contingent Application for Review (the "TDS App."), TDS requests the Commission to revisit and reverse the finding in the Recon. Order that the cross-ownership prohibition in Section 22.921(b)(1) of the rules was violated when TDS maintained a separate and independent application for the Wisconsin 8 wireline cellular authorization, while its subsidiary UTELCO, Inc. (UTELCO) joined the settlement group which was attempting to achieve a full market settlement in Wisconsin 8. As its justification, TDS is content to merely reiterate its previous arguments, which were rejected in the Bureau's Recon. Order.

The issues involved have already been briefed at considerable length in the record below,[2] and no useful purpose would be served by restating them in this opposition. The Settling Partners would point out, however, that a major fallacy in TDS' position continues to be its failure to even acknowledge -- much less properly account for -- the implica-

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[1] Telephone and Data Systems, Inc., 6 FCC Rcd 270 (CCB 1991) (hereinafter sometimes cited as the "Recon. Order").

[2] Century Cellunet, Inc., et al., Petition to Dismiss or Deny, July 27, 1989; Petition for Reconsideration, December 14, 1989; Reply to Opposition, January 11, 1990.

tions of UTELCO's status as a subsidiary of TDS. Contrary to its posture here, TDS cannot properly continue to pretend that it has no cognizable ownership relationship with UTELCO, and that it is not properly accountable for the actions of its subsidiary.[3]

Equally meritless is TDS' continued suggestion that it would somehow violate notions of due process to punish TDS for violating Section 22.921 in the circumstances disclosed in this case. Despite TDS' apparent difficulty in comprehending the nature of its transgression, it does not require rocket science to understand that its actions were designed to stack the lottery for Wisconsin 8 in TDS' favor, and that such schemes are precisely what the rule was promulgated to forestall.

Thus, the absence of proper notice of proscribed conduct is not a factor in this case. Rather, TDS' argument actually translates to the proposition that it should be let off the hook merely because it was the <u>first</u> applicant to think of stacking the lottery in this particular manner. However, when

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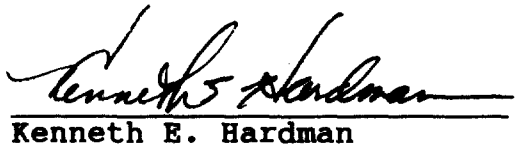
[3] The Settling Partners thus emphatically disagree with TDS' assertion, which typifies its argument herein, that "it is not comparably fair or reasonable to hold an applicant responsible for a settlement agreement reached by a non-applicant company, including one in which the applicant may have a minority ownership position, with other applicants." (TDS App. at p. 8). TDS' characterization obviously does not fairly reflect its true relationship to UTELCO, and it is precisely the fact that UTELCO is a <u>subsidiary</u> of TDS which makes it not only "fair and reasonable," but also <u>obligatory</u> for regulatory purposes to hold TDS accountable for the actions of its subsidiary.

it adopted the rule the Commission acknowledged the ability of a "creative applicant" to think up a novel way of improperly skewing the lottery, and it unequivocally pledged nonetheless that it "will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license".[4]

It is time for the Commission to back up its promise. Accordingly, TDS' plea to be exonerated for its conduct should be categorically rejected.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
VIROQUA TELEPHONE COMPANY

By 
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March 26, 1991

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[4] Cellular Radio Lotteries, 101 F.C.C.2d 577, 600 (FCC 1985). (Emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Opposition to Contingent Application for Review upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 26th day of March, 1991.

Kenneth E. Hardman